UNITED STATES PATENT AND TRADEMARK OFFICE



COMMISSIONER FOR PATENTS UNITED STATES PATENT AND TRADEMARK OFFICE P.O. BOX 1450 ALEXANDRIA, VA 22313-1450

TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO CA 94111-3834

COPY MAILED

JUL 1 9 2006

OFFICE OF PETITIONS In re Application of

Shennib et al.

ON PETITION

Application No. 10/052,199 Filed: 16 January, 2002

Atty. Dkt. No. 022176-000610US

This is a decision on the petition to withdraw holding of abandonment, filed on 25 May, 2006.

This application became abandoned on 11 December, 2004, for failure to timely respond to Notice of Allowance and Fee(s) Due mailed on 10 September, 2004, which set a three (3) month statutory period for reply. Notice of Abandonment was mailed on 18 April, 2006.

Petitioner asserts the holding of abandonment is in error because a timely response to the Notice of Allowance was filed in the form of a Request for Continued Examination (RCE).

A review of the record reveals the following:

On 13 January, 2004, a Notice of Allowance and Fee(s) Due was mailed.

On 15 April, 2004 (certificate of mailing date 12 April, 2004), an RCE and submission were filed.

On 10 September, 2004, a Notice of Allowance and Fee(s) Due and Notice of Allowability were mailed.

On 13 September, 2004, a Revocation and Power of Attorney and Change of Correspondence Address was filed.

As such, a review of the record reveals that, although a timely response was filed to the Notice mailed on 13 January, 2004, no response was ever filed to the Notice of Allowance and Fee(s) Due mailed on 10 September, 2004. Since no response was filed to the Notices mailed on 10 September, 2004, the application became abandoned on 11 December, 2004.

As such, the showing of record is that the abandonment resulted from the failure to petitioners to respond to the Notice of Allowance and Fee(s) Due, rather than an error on the part of the USPTO

Therefore, the application is properly held abandoned.

A courtesy copy of the Notices mailed on 10 September, 2004, is enclosed for petitioners' reference.

The petition is **DISMISSED**.

Any request for reconsideration must be filed within **TWO (2) MONTHS** of the date of this decision.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

By FAX: (571) 273-8300

Attn: Office of Petitions

By hand: Customer Service Window

Mail Stop Petition Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.

Douglas I. Wood

D) Wood

Senior Petitions Attorney

Office of Petitions

Encl: Notice of Allowance and Fee(s) Due

Notice of Allowability



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Altrandria, Virginia 22313-1450 www.uspto.gov

NOTICE OF ALLOWANCE AND FEE(S) DUE

7590

09/10/2004

Donald R. Greene P.O. Box 12995 Scottsdale, AZ 85267-2995 EXAMINER

HARVEY, DIONNE

ART UNIT PAPER NUMBER

2643

DATE MAILED: 09/10/2004

APPLICATION NO.	FILING DATE FIRST NAMED INVENTOR		ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,199	01/16/2002	Adnan Shennib	ISM/006CNT	9072

TITLE OF INVENTION: DISPOSABLE EXTENDED WEAR CANAL HEARING DEVICE

APPLN. TYPE	APPLN. TYPE SMALL ENTITY		PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$665	\$300	\$965	12/10/2004

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

- II. PART B FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.
- III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail

Mail Stop ISSUE FEE Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450

(703) 746-4000 or <u>Fax</u>

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where

(Signa (I	indicated unless corrected maintenance fee notification	below or directed otherwise ns.	in Block 1, by (a) specifying	otification of maintenance fees g a new correspondence addres	s; and/or (b) indicating a sepa	rate "FEE ADDRESS" for
Donald R. Greene P.O. Box 12955 Scottsdale, AZ 85267-2995 Scottsdale,	CURRENT CORRESPONDENCE	CE ADDRESS (Note: Use Block I for	any change of address)	Note: A certificate of	of mailing can only be used for	r domestic mailings of the
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ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type) PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment. (A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY) Please check the appropriate assignee category or categories (will not be printed on the patent): Individual Corporation or other private group entity Government of Fee(s): Issue Fee		-	(2) the r	name of a single firm (having as	a member a 2	
PLEASE NOTE: Unless an assignce is identified below, no assignce data will appear on the patent. If an assignce is identified below, the document has been filed recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment. (A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY) Please check the appropriate assignce category or categories (will not be printed on the patent): Individual Corporation or other private group entity Government. a. The following fee(s) are enclosed: Lasue Fee	P10/58/4/; KeV 03-02 (or more recent) attached. Use	e of a Customer 2 registed, no	ered patent attorneys or agents. It o name will be printed.	If no name is 3	
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Publication Fee (No small entity discount permitted) Advance Order - # of Copies	PLEASE NOTE: Unless recordation as set forth in	an assignee is identified be 37 CFR 3.11. Completion	clow, no assignee data will a of this form is NOT a substitu	ppear on the patent. If an assignment.	gnee is identified below, the d	ocument has been filed for
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a. The following fee(s) are enclosed: Issue Fee	lease check the appropriate	e assignee category or categor	ries (will not be printed on the	patent): Individual I	Corporation or other private em	our entity Government
Publication Fee (No small entity discount permitted) Advance Order - # of Copies					, , , , , , , , , , , , , , , , , , ,	
Advance Order - # of Copies				k in the amount of the fee(s) is o	enclosed.	
Deposit Account Number			d) 📮 Payme	nt by credit card. Form PTO-20:	38 is attached.	
a Applicant claims SMALL ENTITY status. See 37 CFR 1.27. b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2). The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above. IOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other part atterest as shown by the records of the United States Patent and Trademark Office. Authorized Signature	Advance Order - # of	f Copies	The D	irector is hereby authorized by count Number	charge the required fee(s), or (enclose an extra co	credit any overpayment, to opy of this form).
Typed or printed name Typed or printed name Registration of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to proc napplication). Confidentiality is governed by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to proc napplication). Confidentiality is governed by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to proc napplication). Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, ubmitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, lock 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1-lexandria, Virginia 22313-1450.				licant is no longer claiming SM	ALL ENTITY status. See 37 C	FR 1 27(e)(2)
Authorized Signature Typed or printed name Registration No. Registration No. Registration No. Registration No. Registration No. In scollection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to proc no application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, tox 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1- Lexandria, Virginia 22313-1450.						
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APPLICATION NO. FILING DATE		FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,199	01/16/2002	Adnan Shennib	ISM/006CNT	9072
7590 09/10/2004			EXAMI	NER
Donald R. Greene P.O. Box 12995	•		HARVEY,	DIONNE
Scottsdale, AZ 852	67-2 9 95		ART UNIT	PAPER NUMBER
			2643	
			DATEMANTED CONCERNO	_

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)

(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 0 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 0 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (http://pair.uspto.gov).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (703) 305-1383. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR .	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/052,199 01/16/2002		Adnan Shennib	ISM/006CNT	9072	
75	90 09/10/2004		EXAMINER		
Donald R. Greene	;		HARVEY,	DIONNE	
P.O. Box 12995 Scottsdale, AZ 8520	67-2995 [`]		ART UNIT	PAPER NUMBER	
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			DATE MAILED: 09/10/2004		

Notice of Fee Increase on October 1, 2004

If a reply to a "Notice of Allowance and Fee(s) Due" is filed in the Office on or after October 1, 2004, then the amount due will be higher than that set forth in the "Notice of Allowance and Fee(s) Due" because some fees will increase effective October 1, 2004. See Revision of Patent Fees for Fiscal Year 2005; Final Rule, 69 Fed. Reg. 52604, 52606 (May 10, 2004).

The current fee schedule is accessible from WEB site (http://www.uspto.gov/main/howtofees.htm).

If the fee paid is the amount shown on the "Notice of Allowance and Fee(s) Due" but not the correct amount in view of the fee increase, a "Notice of Pay Balance of Issue Fee" will be mailed to applicant. In order to avoid processing delays associated with mailing of a "Notice of Pay Balance of Issue Fee," if the response to the Notice of Allowance is to be filed on or after October 1, 2004 (or mailed with a certificate of mailing on or after October 1, 2004), the issue fee paid should be the fee that is required at the time the fee is paid. See Manual of Patent Examining Procedure (MPEP), Section 1306 (Eighth Edition, Rev. 2, May 2004). If the issue fee was previously paid, and the response to the "Notice of Allowance and Fee(s) Due" includes a request to apply a previously-paid issue fee to the issue fee now due, then the difference between the issue fee amount at the time the response is filed and the previously-paid issue fee should be paid. See MPEP Section 1308.01.

Effective October 1, 2004, 37 CFR 1.18 is amended by revising paragraphs (a) through (c) to read as set forth below.

Section 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original or reissue patent. except a design or plant patent:

By a small entity (Sec. 1.27(a))......\$685.00

By other than a small entity......\$1,370.00

(b) Issue fee for issuing a design patent:

By a small entity (Sec. 1.27(a))......\$245.00

By other than a small entity......\$490.00

(c) Issue fee for issuing a plant patent:

By a small entity (Sec. 1.27(a))......\$330.00

Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

1	pplication No.	Applicant(s)		
10	0/052,199	SHENNIB ET AL.		
A	xaminer	Art Unit		
D	ionne N Harvey	2643		
The MAILING DATE of this communication appears All claims being allowable, PROSECUTION ON THE MERITS IS (Of herewith (or previously mailed), a Notice of Allowance (PTOL-85) or NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGH of the Office or upon petition by the applicant. See 37 CFR 1.313 an	R REMAINS) CLOSED ir other appropriate commu ITS. This application is s	n this application. If not include unication will be mailed in due	ed course. THIS	
1. This communication is responsive to <u>IDS filed 5/11/2004</u> .				
2. The allowed claim(s) is/are <u>1-26</u> .				
3. The drawings filed on <u>08 February 2002</u> are accepted by the 0	Examiner.			
4. ☐ Acknowledgment is made of a claim for foreign priority unde a) ☐ All b) ☐ Some* c) ☐ None of the: 1. ☐ Certified copies of the priority documents have be		or (f).		
2. Certified copies of the priority documents have be		on No		
3. Copies of the certified copies of the priority docur			ation from the	
International Bureau (PCT Rule 17.2(a)).				
* Certified copies not received:				
Applicant has THREE MONTHS FROM THE "MAILING DATE" of noted below. Failure to timely comply will result in ABANDONMEN THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.	this communication to file NT of this application.	e a reply complying with the re	quirements	
5. A SUBSTITUTE OATH OR DECLARATION must be submitted INFORMAL PATENT APPLICATION (PTO-152) which gives	ed. Note the attached EX reason(s) why the oath o	AMINER'S AMENDMENT or for declaration is deficient.	NOTICE OF	
6. CORRECTED DRAWINGS (as "replacement sheets") must be				
(a) ☐ including changes required by the Notice of Draftsperson	n's Patent Drawing Revie	w (PTO-948) attached		
1) hereto or 2) to Paper No./Mail Date		and the second second		
(b) including changes required by the attached Examiner's A Paper No./Mail Date				
Identifying indicia such as the application number (see 37 CFR 1.84 each sheet. Replacement sheet(s) should be labeled as such in the	(c)) should be written on t header according to 37 C	the drawings in the front (not th FR 1.121(d).	e back) of	
7. DEPOSIT OF and/or INFORMATION about the deposit attached Examiner's comment regarding REQUIREMENT FO	OF BIOLOGICAL MAT OR THE DEPOSIT OF BI	ERIAL must be submitted. OLOGICAL MATERIAL.	Note the	
Attachment(s)	5 Thatias of l	nformal Patent Application (P1	ΓΟ-152\	
 Notice of References Cited (PTO-892) □ Notice of Draftperson's Patent Drawing Review (PTO-948) 		Summary (PTO-413),		
	Paper No	/Mail Date	•	
 Information Disclosure Statements (PTO-1449 or PTO/SB/08) Paper No./Mail Date 5/11/2004 		s Amendment/Comment		
4. Examiner's Comment Regarding Requirement for Deposit	8. 🗌 Examiner's	s Statement of Reasons for Al	lowance	
	9. 🔲 Other	- Ilh	V	
of Biological Material		VHUYEN LI	∕√ E	

	Notice of References Cited				Application/Control No. 10/052,199 Applicant(s)/Patent Reexamination SHENNIB ET AL.		ion			
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*		Document Number Country Code-Number-Kind Code	Date MM-YYYY			Name		Classification		
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茶	G	US-6,137,889	10-2000	Shenni	b et al.			381/328		
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*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).) Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

U.S. Patent and Trademark Office PTO-892 (Rev. 01-2001)

Notice of References Cited

Part of Paper No. 09022004